

Ballard Spahr LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617

1 ABRAN VIGIL
Nevada Bar No. 7548
2 BALLARD SPAHR LLP
100 North City Parkway, Suite 1750
3 Las Vegas, NV 89106-4617
Telephone: (702) 868-7523
4 Facsimile: (702) 471-7070
E-Mail: vigila@ballardspahr.com

5 MARK HANOVER
6 (Admitted *pro hac vice*)
DENTONS US LLP
7 233 South Wacker Drive, 7800
Chicago, IL 60606
8 Telephone: (312) 876-8000
Facsimile: (312) 876-7934
9 E-Mail: mark.hanover@dentons.com

10 Attorneys for Defendants
ALLSTATE FIRE AND CASUALTY
11 INSURANCE COMPANY; ALLSTATE INDEMNITY
COMPANY; ALLSTATE INSURANCE
12 COMPANY; ALLSTATE PROPERTY &
CASUALTY INSURANCE COMPANY;
13 ALLSTATE VEHICLE AND PROPERTY
INSURANCE COMPANY
14

15
16 **UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

17 MICHELLE HERRERA, individually, and on
behalf others similarly situated,

18 Plaintiff,

19 vs.
20

21 ALLSTATE FIRE AND CASUALTY
COMPANY; ALLSTATE INDEMNITY
COMPANY; ALLSTATE INSURANCE
22 COMPANY; ALLSTATE PROPERTY &
CASUALTY INSURANCE COMPANY;
23 ALLSTATE VEHICLE AND PROPERTY
INSURANCE COMPANY; and DOES I-V and
24 ROES VI-X, inclusive,

25 Defendants.

Case No. 2:13-cv-00908-MMD-PAL

**STATUS REPORT
CONCERNING APPRAISAL
FILED BY DEFENDANTS**

26 Defendants, Allstate Fire and Casualty Insurance Company, Allstate Indemnity
27 Company, Allstate Insurance Company, Allstate Property & Casualty Insurance Company, and
28 Allstate Vehicle and Property Insurance Company (collectively, "Allstate") hereby submit this

1 Status Report concerning Appraisal pursuant to this Court's December 6, 2013 Order Granting
2 Allstate's Motion to Compel Appraisal. ("Appraisal Order").

3 The Complaint alleges that Allstate failed to pay fair market value for plaintiff's total loss
4 vehicle, and attempts to state causes of action for negligence per se, breach of contract, tortious
5 breach of contract, violation of the DTPA, reformation, unjust enrichment, and declaratory relief.
6 Allstate filed two initial motions. First, Allstate filed a Motion to Compel Appraisal (dkt. no. 5),
7 arguing that the case should be stayed or dismissed pending completion of the appraisal process.
8 Second, Allstate filed a Motion to Dismiss under Fed.R.Civ.P. 12(b)(6) (dkt. no. 6), arguing that
9 plaintiff failed to exhaust administrative remedies, and failed to state a claim.

10 On December 6, 2013, the Court issued an order: (1) granting Allstate's Motion to
11 Compel Appraisal, ruling "this action is stayed pending the appraisal conducted pursuant to the
12 Policy," (2) denying Allstate's Motion to Dismiss as moot, and (3) directing the parties to file a
13 status report within sixty (60) days. (dkt. no. 20).

14 On January 22, 2014, plaintiff's counsel advised Allstate that they had selected an
15 appraiser (but they have not yet disclosed the identity to Allstate). Allstate will select and
16 disclose an appraiser within two weeks. After the parties select their appraisers, Allstate
17 proposes for the appraisers to perform their duties as set forth in the Allstate Policy: "Both you
18 and we have a right to demand an appraisal of the loss. Each will appoint and pay a qualified
19 appraiser. Other appraisal expense will be shared equally. The two appraisers, or a judge of a
20 court of record, will choose an umpire. Each appraiser will state the actual cash value and the
21 amount of loss. If they disagree, they'll submit their differences to the umpire. A written
22 decision by any two of these three persons will determine the amount of the loss." (Allstate Req.
23 for Judicial Notice (dkt. no. 7 at Ex. A, Policy, p. 20).

24 This afternoon, plaintiff's counsel told Allstate that they would seek for the Court to
25 make threshold rulings about the conduct of the appraisal. Most notably, plaintiff's counsel
26 wants the Court to dictate the specific "methodology" to be used by the appraisers. Allstate
27 contends that such rulings are unnecessary, and contrary to the purpose of appraisal. Assuming
28 each party selects a "qualified appraiser," then such appraisers will have experience with

1 automobile valuations in the Nevada, and will perform their duties consistent with the Allstate
2 Policy and state law. Plaintiff's counsel cites no authority for the proposition that the Court must
3 develop detailed appraisal procedures—on the contrary, qualified automobile appraisers are
4 more than capable of performing their duty to value the amount of the loss without blow-by-
5 blow direction from the Court.

6 Allstate contends that the appraisal process should proceed “pursuant to the Policy” (dkt.
7 no. 20) as set forth by the Court, and the parties should file an additional status report within
8 thirty (30) days.

9
10 Dated: February 4, 2014.

Respectfully submitted,

11
12 BALLARD SPAHR LLP

13 By: /s/ Abran Vigil
14 ABRAN VIGIL
15 100 North City Parkway, Suite 1750
16 Las Vegas, NV 89106-4617
Telephone: (702) 868-7523
Facsimile: (702) 471-7070
E-Mail: vigila@ballardspahr.com

17 And

18 MARK HANOVER
19 (Admitted *pro hac vice*)
20 DENTONS US LLP
21 233 South Wacker Drive, 7800
Chicago, IL 60606
Telephone: (312) 876-8000
Facsimile: (312) 876-7934
E-Mail: mark.hanover@dentons.com

22 Attorneys for Defendants
23 ALLSTATE FIRE AND CASUALTY
24 INSURANCE COMPANY; ALLSTATE
25 INDEMNITY
26 COMPANY; ALLSTATE INSURANCE
27 COMPANY; ALLSTATE PROPERTY &
28 CASUALTY INSURANCE COMPANY;
ALLSTATE VEHICLE AND PROPERTY
INSURANCE COMPANY

Ballard Spahr LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617

CERTIFICATE OF SERVICE

I certify that on February 4, 2014, and according to Fed. R. Civ. P. 5(b), I served via CM/ECF and/or deposited for mailing in the U. S. Mail a true and correct copy of the foregoing Status Report to all parties as identified on the Court-generated Notice of Electronic Filing.

David M. Birka-White, Esq. (Pro Hac
Vice Forthcoming)
Birka-White Law Offices
65 Oak Court
Danville, CA 94526

Jesse Sbaih
Jesse Sbaih & Associates, LTD
170 S. Green Valley Pkwy., #280
Henderson, NV 89012

CM Wrangham-Rowe
An Employee of Ballard Spahr LLP

Ballard Spahr LLP
100 North City Parkway, Suite 1750
Las Vegas, Nevada 89106-4617